

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

<b>In the matter of:</b>	)	<b>Order No. R8-2008-0074</b>
	)	<b>for</b>
<b>Carson Hall, Jr.</b>	)	<b>Administrative Civil Liability</b>
<b>310 N. Indian Hill Boulevard</b>	)	
<b>Claremont, CA 91711-4611</b>	)	
	)	
<b><u>Attn: Carson Hall</u></b>	)	

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), held a hearing on November 21, 2008 to receive testimony and take evidence on the allegations contained in Complaint No. R8-2008-0082, dated August 15, 2008 and on the recommendation for the imposition of penalties pursuant to Water Code Section 13399.33 in the amount of \$20,000. The Board finds as follows:

1. On August 19, 1999, the State Water Resources Control Board (SWRCB) adopted Waste Discharge Requirements, Order No. 99-08-DWQ (NPDES No. CAS000002), General Permit for Discharges of Storm Water Associated with Construction Activity (General Permit). The General Permit requires dischargers of storm water from construction sites to obtain permit coverage prior to the start of construction activities. In or around July 2005, Mr. Hall owned APNs 242-070-033, 242-070-034 and 242-070-036. In or around July 2005, Mr. Hall started construction activities on these parcels without first obtaining General Permit coverage. Board staff sent two certified Notices of Noncompliance (NNCs) to Mr. Hall, the first one on July 7, 2006 and the second one on August 15, 2006. Mr. Hall received the first NNC. The second NNC was returned unclaimed. Board staff sent a third NNC by regular mail on December 12, 2007. Mr. Hall acknowledged receipt of the third NNC. These NNCs notified Mr. Hall that the facility is required to obtain coverage under the General Permit and that there is a mandatory penalty for not obtaining coverage under the General Permit. Coverage under the General Permit is obtained by filing a Notice of Intent (NOI). The final NNC required Mr. Carson Hall to submit the NOI by January 11, 2008. Mr. Carson Hall failed to comply with the NNCs. As of November 21, 2008, Mr. Hall has not obtained General Permit coverage.
2. Mr. Carson Hall failed to submit an NOI within 60 days from the date of the original NNC.
3. Water Code Section 13399.30 requires the Board to impose penalties described in subdivision (a) of Section 13399.33 if a discharger fails to submit the required NOI to the Board within sixty (60) days from the date on the original NNC.

4. Water Code Section 13399.33(a) requires the Board to impose civil liability administratively in an amount that is not less than \$5,000.00 per year of noncompliance or fraction thereof, unless the Regional Board makes express findings setting forth the reasons for its failure to do so, based on factors provided in Water Code section 13399.33(a)(2). The consideration of these factors is set forth below.
5. On March 24, 2008, the Assistant Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R8-2008-0048 to Mr. Carson Hall proposing that the Board impose a penalty of \$20,000 on Mr. Carson Hall for the violations cited above. On June 19, 2008, Complaint No. R8-2008-0048 was rescinded and reissued as Complaint No. R8-2008-0062 to correct a citation of the Water Code section (R8-2008-0048 cited the violation as Water Code Section 13399.31; the correct citation should have been Water Code Section 13399.30). On August 15, 2008, it was again rescinded and reissued as ACL No. R8-2008-0082 in order to send the Complaint to a different address.
6. Water Code Section 13399.33(a)(2) requires the Regional Board to consider the following factors in determining the amount of civil liability imposed pursuant to 13399.33: the nature, circumstances, extent, and of gravity of the violation; and with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefits or savings resulting from the violation, and other matters that justice may require. These factors are evaluated in the ACL, a copy of which is attached to this order. These factors are discussed in detail in the table below. Section 13399.33, subdivision (a)(2) also requires that these considerations be balanced against the need for the regulatory costs of environmental protection to be borne equally by dischargers throughout the state, and the need for predictability of enforcement when making business decisions.

Factor	Analysis
A. Nature, Circumstance, Extent, and Gravity of Violation	Mr. Hall conducted construction activities without obtaining coverage under the General Permit, even after receiving two notices from Regional Board staff indicating that coverage was required.
B. Ability to Pay	Mr. Hall has indicated that he is currently facing financial difficulties, and has submitted some documentary evidence to support this contention. Mr. Hall is currently the owner of two parcels of property. Based on Mr. Hall's ownership interests and without sufficient information to support Mr. Hall's claim of financial hardship, the Regional Board finds that Mr. Hall has the ability to pay the assessed penalty.
C. Prior History of Violations	Regional Board staff is not aware of any prior violations by Mr. Hall.

D. Degree of Culpability	Mr. Hall failed to obtain coverage under the General Permit after substantial and significant attempts by Regional Board staff to enroll him under the General Permit.
E. Economic Benefit or Savings	By conducting construction activities without the required permit coverage, failure to pay the necessary application fee, Mr. Hall realized an economic benefit. Mr. Hall saved approximately \$2,542 in annual fees for four years $((\$200 + \$20/\text{acre}) \times 18.5\% \text{ surcharge})$ . The fee for 16.81 acres is \$635.40/year). Total economic savings are therefore calculated to be \$2,542.
F. Other Factors	Regional Board staff spent at least 120 hours of staff time in its efforts to bring this facility into compliance (@\$110.00 per hour, the total cost for staff time in \$13,200).

Additionally, the Regional Board has balanced the proposed penalty against the need for the regulatory costs of environmental protection to be borne equally by dischargers throughout the state, and the need for predictability of enforcement when making business decisions, and finds that a penalty in the amount of \$20,000.00 is appropriate.

7. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 2100 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations.


**IT IS HEREBY ORDERED** that, pursuant to California Water Code Section 13399.33(a), a penalty shall be imposed on Mr. Carson Hall, in the amount of \$20,000, as proposed in Complaint No. R8-2008-0082 for the violations cited, payable as set forth below.

1. Mr. Carson Hall shall pay \$20,000 to the State Water Resources Control Board by December 22, 2008.

The Executive Officer is authorized to refer this matter to the Attorney General for enforcement.

Pursuant to Water Code Section 13320, you may petition the State Water Resources Control Board for review of this order. If you choose to do so, you must submit the petition to the State Board within 30 days of the Regional Board's adoption of this order.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on November 21, 2008.

  
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Gerard J. Thibeault  
Executive Officer